IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2830 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMANSINHJI JORAVARSINHJI

Versus

STATE OF GUJARAT

Appearance:

MR BG PATEL for Petitioner

MS. NANDINI JOSHI AGP for Respondent No. 1

MR NILESH A PANDYA for Respondent Nos. 2 and 4

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: /12/2000

CAV JUDGEMENT

1. In this petition filed under Article 227 of the Constitution, petitioner challenges legality, validity and propriety of judgment and order dated December 24, 1990 (Annexure 'C') passed by Gujarat Revenue Tribunal in Revision Application No. TEN. BA 458 of 1986, whereby

order dated February 24, 1986 passed by Deputy Collector, Sabarkantha at Himatnagar (Annexure 'B') confirming order dated November 15, 1985 passed by Mamlatdar & ALT, Himatnagar (Annexure 'A') have been upheld. By the order dated November 15, 1985 passed by the Mamlatdar & ALT the land admeasuring 19 A. 26 Gs. of S.No. 128 of village Arsamda belonging to the petitioner is declared as surplus land and vested in the State Government free from all encumbrances and the petitioner was ordered to pay fine of Rs.100/- for committing breach of Section 11 of the Act.

2. The petitioner was the owner of agricultural land bearing S.Nos. 128 paiki and 130 paiki at Arsamda village, Taluka Idar, District Sabarkantha, total admeasuring 70 Acres and 11 Gunthas. He could not fill up the form as per the rules and regulations of the Gujarat Agricultural Lands Ceiling Act, 1960 ('the Act' for short). Therefore, fine of Rs.100/- was imposed by the Mamlatdar & ALT, Himatnagar vide order dated March 2, 1977. The petitioner had preferred appeal before the Deputy Collector, Himatnagar which was partly allowed and the matter was remanded to the Mamlatdar & ALT, Himatnagar for holding inquiry under Sections 20 and 21 of the Act. The Mamlatdar & ALT after holding inquiry held that the petitioner was holding 18 A. 5 Gs. in excess of the ceiling limit. Against the said order the petitioner had preferred appeal before the Deputy Collector, Himatnagar and the Deputy Collector again remanded the matter by his order dated October 24, 1983 for holding inquiry with regard to Kharaba land. The Mamlatdar & ALT after inquiry by his order dated May 14, 1984 held that the petitioner was holding 20 A. 9 Gs. of land in excess. The said order was taken in suo motu revision by the Deputy Collector and the matter was again remanded to the Mamlatdar & ALT by his order dated March 15, 1985 for holding inquiry under Sections 20 and 21 read with Sections 11 and 17 of the Act and also directed to hear the representative of the Government.

3. Pursuant to the aforesaid order, the Mamlatdar & ALT initiated inquiry proceedings and by his order dated November 15, 1985, Annexure A to the petition, held that the petitioner is holding 19 A. and 26 Gs. of excess land and imposed a fine of Rs.100/- for not disclosing the excess land within the time limit. Aggrieved thereby the petitioner preferred appeal before the Deputy Collector, Sabarkantha at Himatnagar under Section 35 of the Act. The Deputy Collector vide his order dated February 24, 1986, Annexure B to the petition, dismissed the appeal. The petitioner had taken the said order by

filing revision application before the Revisional Authority under Section 38 of the Act. The Gujarat Revenue Tribunal by order dated April 24, 1990, Annexure C to the petition, dismissed the appeal. Being aggrieved and dissatisfied by the said judgment and order dated April 24, 1990 passed by the Gujarat Revenue Tribunal, the petitioner has filed this petition under Article 227 of the Constitution.

4. Mr. Patel, learned advocate for the petitioner contended that there was no excess land held by the petitioner and, therefore, form under Section 10 of the Act was not required to be filled in by him. What is stressed by him is that there is nothing on record to show that the Mamlatdar & ALT had passed order under Section 8 of the Act. It is further contended that in fact the petitioner had never applied under Section 8 of the Act before the authority and in spite of that the Mamlatdar & ALT observed in his order dated November 15, 1985 that the application filed by the petitioner under Section 8 of the Act was rejected and against the said order no revision was preferred and, therefore, the proceedings under Section 8 of the Act were concluded. It is emphatically submitted by the learned counsel that copy of the document i.e., agreement to sell showing that the land in question, that is, 16 A. 0 Gs. out of S.No. 130 was sold to respondent No.2, was produced but it was not considered on the ground that it was not the original document. Therefore, the finding recorded by the three authorities below is contrary to the settled principles of the Evidence Act. It is also claimed by the learned advocate for the petitioner that transferees i.e., respondent Nos.2, 3 and 4 were also required to be heard but no notice came to be issued to them and, therefore, principles of natural justice were violated. It is also pleaded by the learned advocate that so far as the mortgage of land in favour of respondent No.3 was concerned, it was mortgaged prior to the Act came into force and hence it was not the holding of the petitioner. On the aforesaid premises, he assailed the order recorded by the authorities below i.e., Mamlatdar & ALT as confirmed by the Appellate Authority i.e., Deputy Collector, Himatnagar as well as the Revisional Authority i.e., Gujarat Revenue Tribunal and according to him, the findings recorded by the three authorities below are against the principles of natural justice and, therefore, liable to be set aside by allowing the petition and the matter is required to be remanded to the concerned authority below for holding fresh inquiry after giving opportunity of hearing to respondent Nos.2, 3 and 4.

5. Mr. Nilesh Pandya, learned advocate for respondent Nos.2 and 4 who are the transferees of the land in question, has contended that respondent Nos.2 and 4 are bonafide purchasers and, therefore, opportunity of hearing ought to have been granted to them before passing orders by the competent authority. Since no opportunity of hearing is given to them, though the order is passed against the petitioner, in fact it affects the transferees also and hence it is required to be quashed and set aside by allowing the petition and remanding the matter to the authority for holding fresh inquiry.

6. Ms. Joshi, learned A.G.P. contended that proceeding under Section 8 of the Act was concluded by rejecting the application filed by the petitioner and against the said order no revision as contemplated under the Act was filed and hence the said order has become final. What is challenged in the petition is the orders recorded by the authorities below under Sections 20 and 21 read with Sections 11 and 17 of the Act since the petitioner has not furnished particulars of the land to the Mamlatdar & ALT as provided in Section 10 of the Act and not the order recorded under Section 8 of the Act. Therefore, according to the learned AGP, respondent Nos.2 and 4 who are transferees of the land were not required to be heard and categorical finding in that regard was recorded by the appellate authority as well as Revisional authority which cannot be lightly disturbed in this petition filed under Article 227 of the Constitution. She, therefore, prayed to dismiss the petition.

7. I have considered the submissions advanced at the bar by the respective learned counsel appearing for the parties and the orders recorded by the three quasi judicial authorities below which are impugned in this petition.

8. At the outset, be it state that the Collector, Sabarkantha at Himatnagar by his order dated March 15, 1985 remanded the matter to the Mamlatdar & ALT, Himatnagar for holding inquiry under Sections 20 and 21 read with Sections 11 and 17 of the Act and directed him to hear the representative of the Government and pursuant to which the Mamlatdar & ALT initiated inquiry under the Act and during the inquiry it was found that the petitioner was holding 19 A. 26 Gs. of land of S.No. 128 as surplus land. Therefore, an order under section 21 of the Act was passed. Before the Mamlatdar, it was an inquiry under sections 20 and 21 read with sections 11 and 17 of the Act and not under Section 8 of the Act. On having perusal of the said order, it is seen that the

petitioner was holding 70 A. 11 Gs. of land on January 24, 1971 and thereafter he was holding 40 A. 30 Gs. on April 1, 1976. Therefore, the land transferred by the petitioner after January 24, 1971 till April 1, 1976 with a view to circumvent the provisions of the Act inspite of the fact that permission under Section 8 of the Act was rejected and against that order passed in the said proceedings no appeal was preferred and thus proceedings under Section 8 of the Act were concluded somewhere in December 1982.

9. In view of the aforesaid finding recorded by the Mamlatdar & ALT, Himatnagar, there is no manner of doubt that proceedings under Section 8 of the Act were concluded somewhere in December 1982 and against the order passed in the said proceedings no appeal was preferred. Therefore, the said order has become final. The order passed by the Mamlatdar & ALT under Section 21 of the Act was subject matter of appeal before the Deputy Collector, Sabarkantha at Himatnagar under Section 35 of the Act. On having perusal of the said order, it is seen that the petitioner had produced a copy of the agreement to sell by which according to the petitioner he has sold the land to defendant No.2. It is also seen from the said order that in the pahni patrak name of respondent No.2 is not mentioned but, on the contrary, name of the petitioner is mentioned. It is unequivocally held by the Deputy Collector that the petitioner was the owner of the said land. It is also observed in the said order that the land which was mortgaged to respondent No.3 by way of usurpatory mortgage cannot be excluded from the ownership or holding of the petitioner because as soon as the mortgage is redeemed it would fall back to the petitioner. It was also observed that the petitioner had not obtained permission under Section 8 of the Act and, therefore, the said land is to be included in the holding of the petitioner himself and resultantly the Deputy Collector confirmed the order impugned before him.

10. On having perusal of the order at Annexure C to the petition passed by the Gujarat Revenue Tribunal, it is seen that the transactions were done during the period between March 24, 1971 and April 1, 1976 and the said transactions were entered into during the period from January 24, 1971 and April 1, 1976 and the said transactions were not approved under section 8 of the Act and, therefore, transfer of the said land in favour of the transferees cannot be considered as valid for holding that the petitioner was not possessing the said land on the relevant date. It was also observed that the entire proceedings which were initiated before the Mamlatdar &

ALT were inquiry under Section 21 and not under section 8 of the Act requiring the authority concerned to afford opportunity of hearing to the transferees of the said land. On having further perusal of the order at Annexure C, it is seen that the petitioner has given reply before the Mamlatdar & ALT on November 3, 1985 wherein he has categorically stated that permission under Section 8 of the Act was not granted and the provisions of Section 8 of the Act were not made applicable and, therefore, he has not filled up the form declaring the excess land and even if the authority take decision under Sections 20 and 21 read with Section 11 of the Act, he has no objection. The said finding of fact recorded by the revisional authority cannot be assailed in this petition filed under Article 227 of the Constitution.

11. The contention that there was no excess land held by the petitioner and, therefore, he was not required to fill up form under section 10 of the Act has no substance in view of the findings record by the three authorities below that the petitioner was holding excess land on the relevant date as transfer of the said land has taken place after January 24, 1971 and, therefore, the said transfer cannot be considered to be valid as envisaged under section 8 of the Act as it was done with a view to defeat the provisions of the Act. Not only that there is unequivocal finding that permission under section 8 of the Act was refused and this finding has become final as no revision as contemplated under the Act was preferred by either of the parties, that is, neither the petitioner nor the respondents Nos.2 and 4.

12. The contention that there is nothing on record to show that the authority had passed order under Section 8 of the Act, has also no substance in view of the fact that the Mamlatdar & ALT has categorically recorded finding that application under section 8 was rejected and no revision is filed by the petitioner. Moreover, no such contention was advanced before the appellate authority while challenging the order passed by the Mamlatdar & ALT under Section 21 of the Act. If such a contention was raised before the appellate authority i.e., Deputy Collector, he would have dealt with the same. On having perusal of the order passed by the Deputy Collector, there is no whisper about such a contention made before him. Likewise, no such contention was raised before the Revisional Authority, that is, Gujarat Revenue Tribunal. The said contention is raised before this Court for the first time, which cannot be taken into consideration and no countenance can be given to the same.

13. The contention advanced by the learned advocate for the petitioner that the transferees were required to be heard before passing order declaring surplus land and vesting it in the Government, has also no substance in view of the fact that this was not a proceeding under section 8 of the Act but it was a proceeding under Section 21 of the Act.

14. Much reliance is placed on the judgment rendered by this Court in Lajjashanker Keshavji Joshi v. State of Gujarat, 1985 (2) GLR 658. In the said judgment this Court has held that Section 8 (3) of the Agricultural Lands Ceiling Act in terms provides that on receipt of an application under Section 8 (2) the Collector shall hold an inquiry and after giving an opportunity to the transferor and the transferee or, as the case may, to the parties to the partition, to be heard and after considering the evidence which may be produced, decide whether the transfer or, as the case may be, the partition, was or was not made in anticipation in order to defeat the object of the Act. In the said case this Court has observed that the transferees to be heard in a proceedings initiated under Section 8 of the Act. In that case, transferee was not heard and, therefore, the matter was remanded. There cannot be any doubt about the proposition of law laid down by this Court in the above cited judgment by interpreting provisions of section 8 of the Act but the ratio of the said case cannot come to the rescue of the petitioner in the present case because in this case it was not a inquiry proceeding under section 8 of the Act because the said proceedings were concluded long back in the year 1982 and at the cost of repetition it be stated that no revision was filed against the said order and, therefore, it has become final.

15. Reliance is also placed on the judgment rendered by this Court in the case of Mark Laboratories v. State of Gujarat, 1997 (1) GLR 360. In the said case it was held by this Court that the competent authority under the Bombay Tenancy and Agricultural Lands Act is required to issue notice in prescribed form to the transferor and transferee under the provisions of sections 84C and Section 84B by giving opportunity of hearing to the parties concerned and if such opportunity is not given the order is required to be quashed by remanding the matter to decide afresh. it was a case under Section 84C and 84B of the Bombay Tenancy Act and transferee of the land was not heard before passing the order. Therefore, the matter was remanded. The said judgment is also not applicable to the facts of the present case since in the

present case it was not a proceeding under Section 8 of the Act but it was a proceeding under Sections 20 and 21 read with Sections 11 and 17 of the Act.

16. Seen in the above context, at the cost of repetition be it stated that the proceedings initiated under Section 21 of the Act by the Mamlatdar & ALT which is confirmed by the appellate authority as well as Revisional authority, is assailed by filing writ petition under Article 227 of the Constitution and, therefore, no question of affording opportunity of hearing to the transferees of the land in question would ever arise since the proceedings under Section 8 of the Act were concluded long back in the year 1982 and the said proceedings cannot be reopened in this petition filed under Article 227 of the Constitution wherein proceedings initiated under Section 21 of the Act is challenged.

17. It is settled proposition of law that powers vested in High Court under Article 226/227 of the Constitution of India should be exercised sparingly. The High Court must confine itself to the correcting of error of jurisdiction committed by the courts below and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. Moreover, the power of the High Court under Article 227 of the Constitution is a supervisory jurisdiction and errors of law even cannot be corrected. A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227. The Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision. I am fortified in my above view by the judgments of the Supreme Court rendered in the case of (i) Khanna Improvement Trust v. Land Acquisition Tribunal, 1995 (2) SCC 557, (ii) H.B. Gandhi v. M/s. Gopinath, 1992 (Supp) 2 SCC 312 and Mohd. Yunus v. Mohd. Mustaqim, AIR 1984 SC 38.

18. It is also a settled proposition of law that

concurrent findings recorded by the authorities below cannot be assailed in a writ petition filed under Article 226/227 of the Constitution unless the findings recorded by the authorities below are so perverse, capricious or based on no evidence. On having perusal of the order impugned in this petition I am satisfied that the findings recorded by the authorities below are not only not perverse or capricious but it is based on the evidence on record. There is a positive finding that inquiry proceedings under Section 8 of the Act were initiated and concluded long back in the year 1982 and against the said finding neither the petitioner nor the transferees, respondent Nos.2 and 4, preferred any revision before higher authorities. After having accepted the said finding, now neither the petitioner (transferor) nor the respondents Nos.2 to 4 (transferees) can ventilate their grievance in this petition against the proceedings initiated under section 21 of the Act where the scope is very limited because as per the said proceedings under Section 21 the concerned authority has to make order declaring surplus land and to vest the surplus land in the State Government free from all encumbrances.

19. In the premises, there is no substance in this petition and hence is liable to be dismissed by confirming the orders at Annexures A, B and C.

20. For the foregoing reasons, the petition fails and and accordingly is dismissed. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated.

(A.M. Kapadia, J.)